222, and upholds the case of The Silvia. It would certainly seem to be stretching the meaning of unseaworthiness to say that a vessel is unseaworthy because of a porthole insecurely fastened.

STREET RAILWAY—CONTRIBUTORY NEGLIGENCE—APPORTIONMENT OF FAULT —ANDERSON v. METROPOLITAN CO., 61 N. Y., Sup. 899.—Plaintiff, while ridlng on a wagon that was approaching at right angles a street railway, saw a car approaching about thirty feet distant. The driver did not stop or alter his course and the wagon was struck by the car. *Held*, plaintiff could not recover damages, as he was not free from fault.

The present case is distinguishable from the rule laid down in *Gilbert* v. *Erie R. Co.*, 97 Fed. 747, 9 YALE LAW JOURNAL 234, that where plaintiff and defendant are concurrently negligent the defendant is liable if the exercise of reasonable care on his part would have avoided plaintiff's injury. To have this rule, which seems to be well established in the United States courts, apply, gross negligence on the part of defendant is contemplated and only slight negligence on the part of the plaintiff, a state of facts which does not exist in the present case. Here the negligence seems to be not only concurrent, but of equal degree.

STREET RAILWAYS—PECULIAR OPERATION—NEGLIGENCE PER SE—CITIZENS' ST. RY. CO. v. HOFFBAUER, 56 A. E. 54 (Ind.).—Defendant operated an open electric car, entered from one side by a foot-board running the length of the car. The car at a certain point was run on the left instead of on the right hand double track, with the foot-board but a few inches from the trolley poles. At dusk a passenger, ignorant of the peculiar manner of operation, was injured by stepping on the foot-board and being hit by a trolley pole. *Held*, the facts are sufficient to justify a finding of negligence, but not to constitute a case of negligence per se.

The general tendency of modern decisions is to limit the province of the jury by the extension of the per se doctrine in cases where negligence is clear. *Beach Contri Neg.* 3rd Ed., § 453. The ruling in the present case is contrary to this tendency, as many much more doubtful cases have been held within the per se rule. *French* v. *R. R. Co.*, 116 Mass. 537; *Daniels* v. *Liebig Co.*, 42 Atl. 447. Riding on a foot-board is held not negligence on part of plaintiff in *Brainard* v. *R. R. Co.*, 61 N. Y. Sup. 74, 9 YALE LAW JOURNAL 182.

SURVIVAL ACTS—INSTANTANEOUS DEATH—AMOUNT OF DAMAGES—BROUGHEL v. SOUTHERN NEW ENGLAND TELEPHONE COMPANY, 45 Atl. Rep. 435 (Conn.). —Under a statute providing that a decedent's cause of action, even in case of instantaneous death, shall survive to his administrator; the damages to be awarded are not confined to nominal damages, even though as a matter of fact, "death was instantaneous and the decedent suffered no pain or sensation, and never regained consciousness. See Comment.

TREATIES—ENABLING STATUTES—RIGHTS OF ALIENS—BLYTHE v. HINCKLEY, 59 Pac. Rep. 787 (Cal.).—This presented the novel question, whether a statute giving non-resident aliens the right to hold land was unconstitutional as a usurpation of the treaty-making power, when the treaty was silent upon this point. *Held*, in absence of a contrary treaty stipulation, statute was valid, *Hanreck* v. *Patrick*, 119 U. S. 156; and in case of conflict was not void, but merely suspended during the operation of the treaty. *Geofry* v. *Riggs*, 133 U. S. 258.

VERDICT—NEW TRIAL—MALPRACTICE—EVIDENCE—PHOTOGRAPHS—EXCEPTIONS—JAMESON v. WELD, 45 Atlan. 299 (Me.).—Action on the case against the defendant, a physician and surgeon, for malpractice in treating the plaintiff